HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.679 of 2007

Between

Andhra Bank and others

. . .Appellants

And

Late Shri P.Venkateswar Rao

. . .Respondent

:: JUDGMENT ::

Counsel for the appellants : Shri K.Lakshmi Narasimha

Counsel for respondent : Shri A.Venkata Ramana
for Shri D.V.Sitharam Murthy

28th August, 2007

Per G.S.SINGHVI, CJ

The High Court's power of judicial review of the disciplinary action against the delinquent employee is very limited. It can interfere with the order of punishment if the same is found to be vitiated due to violation of the statutory rules or regulations or the principles of natural justice and such violation is shown to have prejudiced the cause of the delinquent. The High Court can also nullify the order of punishment if the finding of guilty recorded by the enquiring/ disciplinary authority is based on no evidence or is

influenced by extraneous factors/considerations. The doctrine of proportionality and Wednesbury Rule can be invoked by the High Court if it is convinced that the punishment imposed by the employer is per se arbitrary/capricious or wholly disproportionate to the misconduct found proved. Of course, the last mentioned ground is not available in cases involving fraud, misrepresentation or misappropriation/embezzlement of public funds.

I n **State of Orissa v. Bidyabhushan Mohapatra**[1], the Supreme Court considered whether the High Court can interfere with the order of punishment simply because finding recorded by the enquiry officer in respect of some charges is found to be vitiated by an error of law and whether it can go into the sufficiency and adequacy of punishment. While reversing the order of Orissa High Court, which had allowed the writ petition filed by the respondent, their Lordships of the Supreme Court observed:

> "But the Court in a case in which an order of dismissal of a

public servant is impugned is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an inquiry consistent with the prescribed rules, are not justiciable: nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were 'unassailable', the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty for as we have already observed the order of dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the inquiry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice."

In **State of A.P. v. Sree Rama Rao**[2], the Supreme Court indirectly reiterated the proposition laid down in **Bidyabhushan Mohapatra** (supra) and held:

"The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental inquiry against a public servant; it is concerned to determine whether the inquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental

authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the inquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding under Article 226 of the Constitution."

In **State of Madras v. G. Sundaram**[3], the Constitution Bench of the Supreme Court laid down the following proposition:

"High Court, in the exercise of its jurisdiction under Article 226 of the Constitution, cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted departmental enquiry except when it be shown that the impugned findings were not supported by any evidence. It cannot consider adequacy of that evidence to sustain the charge."

In **State of A.P. v. C. Venkata Rao**[4], a three Judges Bench of the Supreme Court held as under:

"In considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court need not be applied. Even if that rule is not applied by a domestic tribunal in any inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an

authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal." (emphasis supplied)

In **B.C. Chaturvedi v. Union of India**[5], the Supreme Court, while considering the appellant's challenge to the order of punishment passed as a sequel to the departmental enquiry held against him, highlighted the limited scope of judicial review by making the following observations:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer

is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case."

In **Apparel Export Promotion Council v. A.K. Chopra**[6], the Supreme Court again considered the High Court's power to interfere with the disciplinary proceedings and held:

"It is a settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose

some other punishment or penalty.

Further, it is a well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is *not* concerned with the *correctness* of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process.

Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

The doctrine of proportionality was evolved by the House of Lords in **Council of Civil Service Unions v. Minister for the Civil Service**[7] in the following words:

"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community;. . ."

In **B.C. Chaturvedi v. Union of India** (supra), K. Ramaswami, J, speaking for himself and B.P. Jeevan Reddy, J, indirectly invoked the

doctrine of proportionality and held:

> "The next question is whether the Tribunal was justified in interfering with the punishment imposed by the disciplinary authority. A Constitution Bench of this Court in **State of Orissa v. Bidyabhushan Mohapatra {AIR 1963 SC 779}** held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226. If the High Court reached a finding that there was some evidence to reach the conclusion, it became unassailable. The order of the Governor who had jurisdiction and unrestricted power to determine the appropriate punishment was final. The High Court had no jurisdiction to direct the Gove rnor to review the penalty. It was further held that if the order was supported on any finding as to substantial misconduct for which punishment 'can lawfully be imposed', it was not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court had no jurisdiction, if the findings prima facie made out a case of misconduct, to direct the Governor to reconsider the order of penalty. This view was reiterated in **Union of India v . Sardar Bahadur {(1972) 4 SCC 618}**. It is true that in **Bhagat Ram v. State of H.P. {(1983) 2 SCC 442}** a Bench of two Judges of this Court, while holding that the High Court did not function as a court of appeal, concluded that when the finding was utterly perverse, the High Court could always interfere with the same. In that case, the finding was that the appellant was to supervise felling of the trees which were not hammer-marked. The Government had recovered from the contractor the loss caused to it by illicit felling of trees. Under those circumstances, this Court held that the finding of guilt was perverse and unsupported by evidence. The ratio, therefore, is not an authority to conclude that in every case the Court/Tribunal is empowered to interfere with the punishment imposed by the disciplinary authority. In **Rangaswami v. State of T.N. {1989 Supp (1) SCC 686}** a Bench of three Judges of this Court, while considering the power to interfere with the order of punishment, held that this Court, while exercising the jurisdiction under Article 136 of the Constitution, is empowered to alter or interfere with the penalty; and the Tribunal had no power to substitute its own discretion for that of the authority. It would be seen that this Court did not appear to have intended to lay down that in no case, the High Court/Tribunal has the power to alter the penalty imposed by the disciplinary or the appellate authority. The controversy was again canvassed in **State Bank of India v.**

Samarendra Kishore Endow {(1994) 2 SCC 537} where the Court elaborately reviewed the case-law on the scope of judicial review and powers of the Tribunal in disciplinary matters and nature of punishment. On the facts in that case, since the Appellate Authority had not adverted to the relevant facts, it was remitted to the Appellate Authority to impose appropriate punishment.

A review of the above legal position would establish that the disciplinary authority, and on appeal the Appellate Authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

In **Ranjit Thakur v. Union of India**[8], the Supreme Court applied the doctrine of proportionality and interfered with the discretion exercised by the employer to punish delinquent employee. Some of the observations made in that judgment are extracted below:

"Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review."

In **Union of India v. G. Ganayutham**[9], the doctrine of proportionality was considered along with Wednesbury rule and the following propositions were laid down:

> "(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test.
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> (2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational – in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU principles.
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> (3) (a) As per Bugdaycay, Brind and Smith as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.
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> (3) (b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.
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> (4) (a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgent of the court is to be based on Wednesbury and CCSU principles as stated by Lord

Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14."

In **State Bank of India v. Samrendra Kishore Endow**[10], **State of Uttar Pradesh v. Ashok Kumar Singh**[11], **State of Uttar Pradesh v. Nandkishore Shukla**[12], **State of Punjab v. Baxi Singh**[13], **Uttar Pradesh State Road Transport Corporation v. A.K. Parul**[14], **Union of India v. J.R. Gheman**[15], the Supreme Court disapproved invoking of the doctrine of proportionality by the High Courts.

In **Om Kumar v. Union of India**[16], the Supreme Court considered the applicability of the doctrine of proportionality in the context of Article 14 of the Constitution, referred to the judgments in **Ranjit Thakur v. Union of India** (supra), **B.C. Chaturvedi v. Union of India**[17] and held:

"1) In this context, we shall only refer to these cases. In **Ranjit Thakur v. Union of India** this Court referred to "proportionality" in the quantum of punishment but the Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. In **B.C. Chaturvedi v. Union of India** this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the court could

award an alternative penalty. It was also so stated in **Ganayutham**."

2) Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

In **Regional Manager, U.P. SRTC v. Hoti Lal**[18], the Supreme Court outlined the mode to be adopted for determining whether the punishment imposed by the disciplinary authority is shockingly disproportionate and observed as under:

"The Court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. A mere statement that it is disproportionate would not suffice. It is not only the amount involved by the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptional."

In **Director General, RPF v. Ch. Sai Babu**[19], the Supreme Court reiterated that the High Court should ordinarily not interfere with the discretion exercised by the disciplinary authority in the matter of imposition of punishment and observed:

> "Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works."

The views expressed in the above noted cases have been reiterated in the recent judgments – **Hombe Gowda Educational Trust v. State of Karnataka**[20], **Bharat Petroleum Corpn. Ltd. v. T.K. Raju**[21], **Commissioner of Police v. Syed Hussain**[22], **State of U.P. v. Sheo Shanker Lal Srivastava**[23], **A.P. SRTC v. Raghuda Siva Sankar Prasad**[24] and **Coimbatore District Central Coop. Bank v. Employees Assn.**[25]. In the last mentioned decision, the Supreme Court referred to large number of judicial precedents on the subject and held that the constitutional requirement for judging the question of reasonableness and fairness on the part of the statutory authority must be considered having regard to the factual matrix of each case and it cannot be put in a straight jacket formula.

We have taken note of the above stated legal position relating to the High Court's jurisdiction to interfere with the disciplinary action taken by the employer against the delinquent employee and the

applicability of the doctrine of proportionality in such matters because the only issue which arises for determination in this appeal filed by Andhra Bank and two others under Clause 15 of the Letters Patent is whether the learned Single Judge was justified in invoking the doctrine of proportionality and converting the punishment of dismissal from service imposed on Shri P. Venkateswara Rao (since deceased) (respondent No.1 herein), who is now represented by his widow Smt.Nagamani, into that of compulsory retirement.

Respondent No.1 joined the service as Clerk on 09.10.1958 in the Bharat Lakshmi Bank Limited, which was amalgamated with Andhra Bank Limited (for short, 'the bank') in 1964. As a consequence of amalgamation, the employees of Bharat Lakshmi Bank Limited, including respondent No.1 were absorbed in the bank. In 1972, respondent No.1 was promoted as an Accountant. (After nationalization of the bank, the post of Accountant was designated as Junior Management Grade-I). In May, 1985, respondent No.1 was further promoted to the Middle Management Grade-II.

In August, 1982, respondent No.1 was posted at Saifabad Branch of the bank. After his promotion to Middle Management Grade-II, he was assigned supervisory duties like clearing of instruments, attending to savings bank accounts/ transactions, supervising all the work of the current account clerical staff and signing of the drafts etc. In December, 1986, the management of the bank decided to shift Saifabad Branch to Sarovar Hotel complex. The Saifabad Branch started working at the new site from 29.12.1986. After sometime, it was discovered that five savings bank account ledger binders were missing. Thereupon, the Regional and Central Offices of the bank were alerted and, on being instructed to do so, Branch Manager lodged complaint with Khairtabad Police Station. On 03.1.1987,

respondent No.1 was placed under suspension along with the Branch Manager, Shri T. Anil Kumar and the Cashier, Shri Sudershan. After two years and eleven months, respondent No.1 was served with charge sheet dated 04.12.1989. It was alleged that respondent No.1 had not taken adequate care while noting the particulars in the cheque book issue register and as a result of that, the forged cheques were passed for payment causing loss of Rs.90,500/-. Another allegation levelled against respondent No.1 was that due to his negligence, Shri Sudarshan could misappropriate a sum of Rs.15,000/-. At the end of the enquiry, a punishment of recovery of Rs.90,500/- was imposed on respondent No.1. He challenged the order of punishment in Writ Petition No.19816 of 1996, which is pending adjudication.

After one year and eight months, the bank initiated another inquiry against respondent No.1 under Regulation 3 (1) of the Andhra Bank Officer Employees' (Conduct) Regulations, 1982 (for short, 'the Regulations'). He was served with charge memo dated 4.7.1991 containing the following allegations:

1) the page total in the cash scroll maintained by you on 8.1.85 relating to the transactions C-76 to C-91 was allowed to be done by the then cashier, Mr.M. Sudershan, who had inflated the totals by Rs.10,000/-. The correct total of the said column is Rs.4,950/- but was shown as Rs.14,950/-. This act of yours had facilitated Mr.M. Sudershan to misappropriate funds to the tune of Rs.10,000/- by inserting in 8-1-1985 vouchers, a fake and forged withdrawal dt.8-1-1985 for Rs.10,000/- purported to have been drawn by SB 5361 account-holder.
2) You were negligent in scrolling the item of cash payment of SB cheque for Rs.1,000/- drawn by SB 5613 account-holder on 20-8-1985 twice under scroll numbers 49 and 52. Mr.M. Sudershan, the then Cashier of the branch, taking advantage of double scrolling of the above item, inserted a fake and forged withdrawal for Rs.2,000/- in the relevant day's vouchers, purported to have been drawn by SB 5313 account-holder and misappropriated the amount. Because of your negligence, the Bank is exposed to a financial risk of Rs.2,000/-.
3) You were negligent in scrolling the item of cash payment of SB 852 withdrawal for Rs.7,500/- twice on 20.12.1985 under scroll numbers 49

and 51. Mr.M. Sudershan, the then cashier of the branch, taking advantage of double scrolling of the above item, inserted the following fake and forged withdrawals in the concerned day's vouchers and misappropriated Rs.7,500/-.

a. SB withdrawal for Rs.4,000/- purported to have been drawn by SB 5246 account-holder.

b. SB withdrawal for Rs.3,500/- purported to have been drawn by SB 5341 account-holder.

Because of your negligence, the bank is exposed to a financial risk of Rs.7,500/-.

4) You were negligent in authorizing cash payment of the cheque for Rs.1,000/- on 6.7.1984 drawn by SB 206 account-holder in favour of M/s.LIC Employees' Co-operative Credit Society Ltd., since the transaction was already put through transfer scroll, Mr.M. Sudersan, the then cashier of the branch, taking advantage of the above lapse inserted in the day's vouchers a forged withdrawal for Rs.1,000/- purported to have been drawn by SB 4159 account-holder, an account which was closed on 8.9.1983 and misappropriated the same. Because of your negligence, the bank is exposed to a financial risk of Rs.1,000/-.

5) You had authorized debit transactions of Rs.58,000/- on 15.5.1985 in the SB a/c 403 favouring Md.Ibrahim and Akthar Sultana, without verifying the genuineness of the credit item of Rs.25,000/- dt.13.5.85 (a transaction which was immediately prior to the debit transaction allowed by you) since the balance struck on 13.5.1985 is not authenticated. From the scrutiny of the relevant documents of 13.5.85, it is observed that there was no such remittance. Because of your negligence in not verifying the genuineness of the transactions of 13.5.85, the bank is exposed to financial risk of Rs.25,000/-.

6) Mr.V. Satyanarayana Raju had remitted an amount of Rs.10,000/- into his SB 4951 account on 13.3.1984. This transaction is reflected in the concerned ledger sheet and the pass book. Cash scroll does not show any such remittance. Mr.M. Sudershan, the then cashier of the branch had received the amount, misplaced the challan after the entry was made in the ledgersheet and misappropriated the amount. The balance struck in the ledger sheet after this credit entry is not authenticated. Without verifying the genuineness of this transaction, you had authenticated the balance struck in the subsequent transaction and thus exposed the bank to financial risk of Rs.10,000/-, since the party had subsequently withdrawn the amount.

The enquiry officer submitted report with the finding that Charge Nos.1, 2, 3 and 4 are proved, charge No.5 is partly proved and charge

No.6 is not proved. The findings recorded by the enquiry officer on each of the charges are as under:

Findings on Charge No.1:

From the above evidence, the charge that the CSO allowed Mr.M. Sudershan, the then Cashier, who totaled the payments side of the cash scroll which facilitated the said Mr.Sudershan to effect payment against a fake withdrawal for similar amount to cover up the inflated amount of Rs.10,000/- is held proved.

Findings on Charge No.2:

Hence, the charge that the CSO was negligent in scrolling one cheque of Rs.2,000/- drawn in SB a/c 5613 on 20.8.85 twice under Scroll No.C.49 and C.52 is established and this has facilitated the then cashier to insert a fake withdrawal for similar amount of Rs.2,000/- purported to have been drawn by SB 5313 a/c holder and thereby exposed the bank to financial risk of Rs.2,000/- is held proved against the CSO.

Findings on Charge No.3:

The charge that the CSO was negligent in scrolling the item of cash paymjent of Rs.7,500/- against SB 852 withdrawal on 20.12.85 under Scroll nos.49 and 51 is held proved as discussed above. It was also established that 2 fake withdrawals for Rs.4,000/- and Rs.3,500/- have been paid by Mr.M. Sudarshan of by taking advantage of the double scrolling of Rs.7,500/- by the CSO which has ultimately exposed the bank to a financial loss risk of Rs.7,500/-.

Findings on Charge No.4:

Hence, the charge that the CSO is negligent in scrolling a cheque on payments side of cash scroll and authorizing payment by which an a/c payee cross cheque and which has already been put in a transfer scroll is held proved. It is also established that this has only facilitated the insertion of withdrawal of Rs.1,000/- purported to have been drawn from SB a/c 4159, which has already been closed on 8.9.83, thereby causing financial loss of Rs.1,000/- to the branch.

Findings on Charge No.5:

The charge that the chargesheeted officer authorized the debit transaction of Rs.58,000/- on 15.5.85 in the SB a/c.No.403 against unauthenticated balance in the said account is held proved against the chargesheeted officer as discussed above, only to this extent.

Findings on Charge No.6:

The charge that the chargesheeted officer without verification of the transaction, authenticated the balance struck in the subsequent transaction held not proved in the enquiry.

A copy of the enquiry report was supplied to respondent No.1 to enable him to submit representation. However, he did not avail that opportunity. Thereafter, by an order dated 6.10.1995, the disciplinary authority imposed the penalty of dismissal from service on respondent No.1. The appeal preferred by him was dismissed by Deputy General Manager-cum-Appellate Authority of the bank vide his order dated 12.12.1995.

Respondent No.1 challenged his dismissal in Writ Petition No.22242 of 1997. He pleaded that the findings recorded by the enquiring authority were based on no evidence and the disciplinary authority committed a serious illegality by accepting the enquiry report and imposing penalty of dismissal from service. He also alleged that the management was prejudiced against him and imposed extreme penalty on the ground of negligence in performance of duty, whereas other persons involved in the matter were left out. He also invoked the doctrine of proportionality by contending that the punishment is extremely harsh and out of proportion. For the sake of convenience, paragraphs 15 to 19 of the affidavit filed by respondent No.1, which contain the grounds of challenge, are reproduced below:

15. While it is an admitted position that the cash scroll of varying dates that was forming part of the documents filed against me contained entries which were made by several officers. But, however, the management has preferred to glass over those handwriting of those officers and preferred to proceed against me alone leaving out those officers from any proceeding. I respectfully submit that this itself reflects the pre-determination of the Bank to penalize me and not allow the benefit of doubting in my favour under any circumstances. I respectfully submit that as a gullible victim of the fraud played by Sri Sudarshan, me and other officers were placed in the same position. But, however, I had been isolated for the hostility of the treatment by the Management. This attitude also reflects the prejudice of the management against me and also its pre-determination to penalize me holding me guilty of every imputation leveled against me irrespective of the

merits behind that imputations.

16) The management of the bank is scrupulously avoided to address itself right from the very inception of the proceedings that I have become a victim of the circumstances in which Sri Sudarshan, the cashier of the bank, has played fraud. The management of the bank itself is not only conscious of the fraudulent transactions indulged in by Sri Sudarshan but was also certain that he is the undoubted culprit behind the various allegations thrown against me. In such a back drop wherein the involvement of Sri Sudarshan and his fraudulent means were clearly visible to the management, it is totally unfair for the bank to have picked me up for the hostility of the disciplinary action and the resultant dismissal from service. Fortunately, the bank has never alleged that I was a party to the fraudulent transactions unless shed by Sri Sudarshan and the evidence on record has also pointed out a note in certain terms that it was Sri Sudarshan who took full advantage of the lapses of the system of managing the affairs in a very busy branch like that of the Saifabad Branch of the bank. Consequently it become totally unfair affair for the management of the bank to turn round and allege that I was guilty of negligence in performing my duties. I most respectfully submit that the entire charge sheet hinges itself very delicately upon the allegation that I was negligent while performing my duties as an officer of the bank and this competent has helped Sri Sudarshan to perpetrate fraud and mischief. I most respectfully submit that no attempt was made to establish as to the degree of care required to the possessed for performing the duties by an officer of the bank and then establish by the said standard as to where exactly I was found wanting while performing my duties. In the absence of any material which can be attributed to an act of negligence on my part, it will be totally unfair are said to have been proved against me. I submit that when there is no material on record to establish that I was guilty of negligence, the entire edifies built upon the charge sheet, dt.04.7.1991 must fall to ground.

17) It will be appropriate to point out that the bank has pre-determined my guilt well before the disciplinary proceedings have been initiated. The bank seems to have determined to dismiss me from service though the bank is aware that I am not personally liable for any acts or commission indulted in by Sri Sudarshan. In this back drop, my objection that the document C-250 is not in my handwriting has also gone unanswered. When I have asserted that C-250 is not in my handwriting while the management witness who does not have first hand knowledge about the document, as he was only deputed to be the part of the investigating team, the management did very lately to establish my handwriting in C-250 with reference to any independent opinion or material from any source. Consequently, I could not have been linked up

in any way to these transactions. But, yet I found guilty of the allegations. This itself will reflect the extent of prejudice entertained against me by the bank from the very beginning.

18) In any view of the matter, the order passed by the disciplinary authority which has since been emerged when that the appellate authority does not reflect any exercise made with regard to the quantum of punishment liable to be imposed against me. I respectfully submit that the set up allegations leveled against me even if they were to be taken as having been established, yet the imposition of the penalty of dismissal from service is totally harsh and out of all proportion. No attempt whatsoever was made to look at my past record and my involvement in the acts of fraud unleashed by Sri Sudarshan. As an unsuspecting victim of the fraud and mischief of Sri Sudarshan, my conduct is liable to be viewed positively, instead, the bank has construed and considered the same in a totally negative manner without giving any credit for the record of performance of my service and the lack of positive involvement for my part in various acts commission of Sri Sudarshan. Hence, the imposition of punishment of dismissal from service shocks any impartial mind and conscious. I, therefore, respectfully submit that on this ground of imposition of too harsh and too disproportionate a penalty against me, the impugned orders are liable to be set aside.

19) I respectfully submit that the fraud and mischief played by Sri Sudarshan and the consequential travails that I had been subjected to have rained me and my family members beyond any semblance of recognition. I have been rained both financially and emotionally. My health and the health of my wife has suffered one set back of the other continuously. Though I was hailing from a respectable middle class family, we were totally shattered and reduced to a very ordinary stage of living. I had suffered a severe coronary debility resulting in my undergoing an open heart surgery and the constant medical attention. My wife has almost become bed-ridden and we both have been reduced such stages as have not been able to move out of our place of residence. This entire situation was as a result of grave humiliation I was subjected to at the hands of the bank after having rendered 3 decades of loyal and faithful service which is punctuated with letters of appreciation and recognition. It is only the moral support that is extended by the few well meant friends that has been the source for our further living. This was the extent to which I was drained off.

The bank raised the stock plea that the findings recorded by the enquiry officer are based on the evidence adduced by the department

and that the discretion exercised by the disciplinary authority to impose the penalty of dismissal from service does not suffer from any legal infirmity.

The learned Single Judge did not go into the merits of the challenge thrown by respondent No.1 to the order of punishment, but held that the enquiry was conducted in accordance with the rules of natural justice and the charges were rightly found proved against respondent No.1. The learned Single Judge then invoked the doctrine of proportionality and substituted the punishment of dismissal with that of compulsory retirement. This is reflected in paragraphs 8 and 9 of the impugned order, which are extracted below:

8. I find no necessity of going into all the details. The whole charge against the petitioner is that he allowed one Sudarshan, Cashier, to handle the scroll registers and make dubious entries, which resulted in financial risk of the Bank. In the entire findings recorded by the Enquiry Officer against each charge, there was no allegation of any intention on the part of the petitioner in allowing the said Sudarshan to manipulate or create dubious accounts of the Bank. In fact, the petitioner himself admitted that it was mistake on his part in not properly supervising the accounts. Further, in the enquiry, the Enquiry Officer gave categorical findings that the petitioner may not be strictly involved, but his negligence made Sri Sudarshan take an advantage of the situation and therefore, it cannot be said that the charges made against the petitioner are not proved. On a careful perusal of the entire material made available on record and also on hearing both sides, it is evident that the charges are proved and the enquiry was properly conducted. However, now, it has to be seen whether the punishment inflicted on the petitioner (since died) was proportionate to that of misconduct. The learned counsel for the respondents also relied upon various judgments in this regard. I am of the considered opinion that in the peculiar facts and circumstances of this case, those judgments have no relevance to the facts of this case.

9. There is no information available on record that the petitioner has ever committed any such misconduct earlier, which requires to be taken into consideration in warranting his dismissal from service. Therefore, I am of the opinion that the punishment of dismissal is shockingly disproportionate to that of misconduct proved. In a case of this nature, generally speaking, the

matter needs to be remanded for reconsideration of the punishment imposed on the petitioner by the Disciplinary Authority, but since the petitioner died and more than seven years elapsed since passing of the impugned order, I deem it appropriate to give a quietus to this litigation at this stage. Therefore, in the interest of justice, the impugned order is set aside and the respondents are directed to impose a punishment of compulsory retirement from service against the petitioner, instead of dismissal from service, as on the date of passing of the impugned order.

Dr. K. Lakshmi Narasimha criticized the order of the learned Single Judge by arguing that he could not have casually interfered with the discretion exercised by the disciplinary authority in the matter of award of punishment. Learned counsel emphasized that even though respondent No.1 was found guilty only of the charges of negligence in performance of duties, the punishment of dismissal from service cannot be treated as disproportionate to the misconduct found proved because he was holding a very responsible position in the bank. In support of his argument, Dr. Narasimha relied on the judgments to which reference has been made hereinabove. In the end, he argued that even if the applicability of the doctrine of proportionality to the case of respondent No.1 is approved, the punishment may be made operative from the date on which he would have superannuated from the service of the bank.

Shri A. Venkata Ramana, learned counsel appearing for the widow of late Shri P. Venkateshwar Rao argued that even though the learned Single Judge has not assigned detailed reasons for not substituting the punishment of dismissal from service with that of compulsory retirement, the Bench may not interfere with the impugned order because the employee is no more and his widow will get only post-retiral benefits in lieu of the services rendered by her husband. He, however, agreed that the punishment of compulsory retirement may be made operative from the date late Shri P. Venkateshwar Rao

would have superannuated.

We have given serious thought to the entire matter and are in agreement with the learned counsel for the appellants that the order under challenge is vitiated by a patent error, inasmuch, as the learned Single Judge has not assigned reasons for substituting the punishment of dismissal from service imposed by the disciplinary authority on respondent No.1 with that of compulsory retirement. The Court's power of judicial review of the employer's action to punish the delinquent employee is extremely limited and the doctrine of proportionality cannot be lightly invoked for tampering with the employer's prerogative to penalize the delinquent. That apart, whenever and wherever the Court comes to the conclusion that the punishment imposed by the employer is shockingly disproportionate or wholly arbitrary and capricious, it can only remit the matter to the disciplinary authority for re-consideration. The Court cannot, except in very special circumstances, substitute its opinion with that of the employer on the gravity of misconduct and the severity of punishment. Even while remitting the case to the employer for fresh consideration, the Court is duty bound to record cogent reasons why it feels that the punishment is extremely harsh or shockingly disproportionate or totally arbitrary. The order of remand cannot be passed ex debito justiciae.

In view of the above, we may have set aside the order of the learned Single Judge and remanded the case for fresh consideration of the issue of proportionality, but, keeping in view the fact that respondent No.1 is no more, we have refrained from adopting that course.

On the merits of the applicability of the doctrine of proportionality, we find that while imposing the extreme penalty of dismissal from service, the disciplinary authority overlooked two most important

factors i.e. the length of service of respondent No.1 (37 years) and the gravity of misconduct found proved against him – negligence in the performance of duties. It would have been quite legitimate for the disciplinary authority to impose the punishment of dismissal from service if respondent No.1 had been found guilty of misappropriation, embezzlement or fraud. However, the fact of the matter is that he was not found guilty of the charge of misappropriation, embezzlement or fraud. Rather, the substratum of the allegation levelled against respondent No.1 was that he did not perform his duty with due care and caution. For such misconduct, the extreme penalty of dismissal from service was not at all warranted. To put it differently, the penalty of dismissal from service imposed on respondent No.1 was shockingly disproportionate to the charges found proved and the exercise of power by the disciplinary authority was vitiated by total arbitrariness and non-application of mind to the factors which have bearing on the exercise of employer's prerogative to punish the delinquent employee.

In the result, the appeal is dismissed with the modification that the punishment of compulsory retirement imposed on late Shri P. Venkateshwar Rao shall become operative from the date on which he would have superannuated from service and his widow shall be entitled to receive monetary benefits only from that date.

As a sequel to the dismissal of appeal, W.A.M.P.No. 1367 of 2007 filed by the appellants for interim relief is also dismissed.

G.S.SINGHVI, CJ

28th August, 2007

C.V.NAGARJUNA REDDY, J

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[1] AIR 1963 SC 779
[2] AIR 1963 SC 1723
[3] AIR 1965 SC 1103
[4] AIR 1975 SC 2151
[5] (1995) 6 SCC 749
[6] (1999) 1 SCC 759
[7] (1984) 3 All ER 935
[8] (1987) 4 SCC 611
[9] (1997) 7 SCC 463
[10] (1994) 2 SCC 537
[11] (1996) 1 SCC 302
[12] (1996) 3 SCC 750
[13] (1997) 6 SCC 381
[14] (1998) 9 SCC 416
[15] (1999) 6 SCC 403
[16] (2001) 2 SCC 386
[17] (1995) 6 SCC 749
[18] (2003) 3 SCC 605
[19] (2003) 4 SCC 331
[20] (2006) 1 SCC 430
[21] (2006) 3 SCC 143
[22] (2006) 3 SCC 173
[23] (2006) 3 SCC 276
[24] (2007) 1 SCC 222
[25] (2007) 4 SCC 669